

REMARKS/ARGUMENTS

This Reply is responsive to the Final Office Action dated September 29, 2010. Claims 1-5, 9-12, 15-18, 30-31, and 36-42 were pending in the application. In the Office Action, Claims 1-5, 9-12, 15-18, 30-31, 36-42 were rejected. In this Reply, Claims 1 and 37 were amended and a Declaration Of Vinay Mehta Under 37 C.F.R. 1.131 has been submitted. Claims 1-5, 9, 12, 16-18, 36-42 remain for consideration.

Applicant submits that Claims 1-5, 9, 12, 16-18, 36-42 are in condition for allowance and requests withdrawal of the rejections in light of the following remarks.

A. Claim Rejections Under 35 U.S.C. §112, first paragraph

Claim 1-5, 9, 12, 16-18 and 36-42 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention.

The Examiner states that the specification as originally filed does not provide support for the claimed structure of a breathable thermoplastic film comprising a thermoplastic polyurethane blended with about 40-60% ethylene methacrylate polymer.

In order to expedite the allowance of this application, Applicant has amended the claims to a breathable thermoplastic film comprising a thermoplastic polyurethane blended with ethylene methacrylate polymer. The above rejection is now considered moot.

B. Claim Rejections Under 35 U.S.C. § 103(a)

1. Claims 1-5, 9, 12, 16-18 and 36-42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over WO 9637668 in view of Corzani et al (U.S. Patent App. Pub. No. 2003/0194566).

In response, Applicant submits a declaration under 37 C.F.R. 1.131 by the inventor Vinay Mehta of the instant application. As evidenced by the affidavit, weekly reports and lab notes describing the claimed invention were drafted by the inventor of the instant application. These notes were authored prior to March 28, 2003.

Corzani has an effective filing date of March 28, 2003. (See MPEP §§706.02(F)(1), 715 and 2141.01). And as shown by the affidavit, it is clear that the claimed subject matter of the instant application predates the effective filing date of the Corzani cited reference. Therefore, Corzani is not a prior art reference.

Since Corzani is not a prior art reference and WO 9637668 alone is insufficient to reject the pending claims, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In view of the aforementioned remarks and amendments, the Applicant believes that each of the pending claims is in condition for allowance. If, upon receipt and review of this amendment, the Examiner believes that the present application is not in condition for allowance and that changes can be suggested which would place the claims in allowable form, the Examiner is respectfully requested to contact Applicant's undersigned counsel at the number provided below.

The Director is hereby authorized to charge any fees that may be associated with this filing or credit any overpayment of same, to Deposit Account No. 03-1250, under Reference No. FDN-2815, Customer No. 43,309.

Respectfully submitted,

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